

Plaintiffs seek a determination, pursuant to rule 4007(a) and (b) of Federal Rules of Bankruptcy Procedure (28 U.S.C.), that the debt has been fully discharged, whether any security interest has been sold, or transferred.

Additionally, they seek a declaration that Defendant is in violation of the court's order denying the request for retroactive relief.

The Second Cause of Action seeks damages for Defendants being in violation of the discharge injunction in Plaintiff-Debtor's Chapter 13 Case.

The Third Cause of Action seeks damages for Defendants being in violation of the discharge injunction and the automatic stay.

The Fourth Cause of Action seeks the award of statutory attorney's fees.

Bankruptcy Case in Which the Stay is Asserted to Have Been Violated

The Plaintiff-Debtor directs the court to Plaintiff-Debtor's prior Chapter 13 case, 12-26989, which was filed on April 10, 2012 and dismissed on January 17, 2013. However, the request for retroactive relief from the automatic stay is asserted in the Complaint to have been heard on January 13, 2015 – which is two years after the bankruptcy case in which the stay existed was dismissed. There is not hearing for relief in that case.

The court notes that case 12-26898 has now been reopened and Defendant has filed a Motion for Retroactive Relief From the Automatic Stay in case 12-26898 (Dckt. 87). In Motion filed in case 12-26898, it is stated that the prior Motion filed in case 13-2415 was denied without prejudice, the court notifying all parties in 2015 that it was filed in the wrong bankruptcy case and filing of the Motion for Retroactive Relief had to be filed in the case in which the automatic stay arose.

This court's ruling denying without prejudice the Motion for Retroactive Relief in case 13-2415 includes the following:

The automatic stay at issue, and which must be annulled with respect to the April 13, 2012 recorded deed, is the automatic stay in the Debtors second bankruptcy case No. 12-26989. See 11 U.S.C. § 362(a) (creation of automatic stay), (c)(termination of stay by operation of law), and (d) (termination of stay obtained by party in interest).

The court also notes that while the deed was recorded on April 13, 2012, just three days after the April 10, 2012 filing, no grounds are stated as to (1) when Movants learned of the Second Bankruptcy Case being filed, (2) why they did not seek relief from the stay during the Second Bankruptcy Case, and (3) when they purport to have transfer the property to some third-party.

It appears that enough confusion has been created in the Second Bankruptcy Case and this Current Bankruptcy Case by inconsistent statements and inaction of the Debtors and Movants. The court will not add to it by trying to cut

corners and issuing an order in this case purporting to effect the automatic stay in an order in another case - which Second Bankruptcy Case has not been assigned to this judge.

13-24415; Civil Minutes, Dckt. 114 at 3.

Now, seven years later, Defendant is seeking retroactive relief from the stay in case 12-26898.

SUMMARY OF ANSWER

Defendant Kenneth and M. Jo Jones have filed an Answer, Dckt. 8. In reviewing the Answer, court first notes that, subject to the certifications made by Defendant and Defendant's counsel pursuant 9011, that the Defendant denied, based on a lack of information and belief, identified by the paragraph number in the Complaint:

1. The Adversary Proceeding is brought in connection with bankruptcy case 13-24415.
2. Federal jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 157 and 1334, and that it is a core proceeding.
- [There is no paragraph 3 in the Complaint.]
4. That Defendant and Defendant's counsel lack "information or belief" to address the legal allegation of whether denial of the Motion for Retroactive Relief was a core proceeding.
5. That Defendant and Defendant's counsel lack "information or belief" to address the asserted allegation that Defendant alleges that New Mexico Law preempts the Bankruptcy Code.

Answer, ¶ 3; Dckt. 8. As addressed below, a party does not have the luxury of failing to admit or deny the legal allegations of jurisdiction and core matter proceeding.

Defendant has also asserted eight Affirmative Defenses which are stated as (paragraph is the same as the order of stated affirmative defenses):

1. The First Affirmative Defense is not identified, but appears to be a series of factual allegations.
2. Failure to state facts sufficient to constitute a cause of action.
3. Barred by the Doctrine of Offset and Recoupment.
4. Defendant "Lacks Adequate Protection."

5. Defendant “Lacks Adequate Protection.”
6. “The Debtor Wrongfully Encumbered the Property with a Senior Lien, Then Defaulted of the senior lien.”
7. No Seventh Affirmative Defense is stated.
8. The Property “is not necessary for an effective reorganization.”
- 9.

REQUIRED PLEADING OF JURISDICTION AND CONSENT OR NON-CONSENT TO NON-CORE MATTER

As discussed below, Federal Rule of Civil Procedure 8(b), which is incorporated into Federal Rule of Bankruptcy Procedure 7008, requires that a responding party must, in good faith, respond to each claim asserted, and if generally denying, such general denial must also be denying that federal jurisdiction exists. There is not an “except for allegations of jurisdiction” exclusion in Rule 8.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the party consents or does not consent for the bankruptcy judge to issue final orders and judgment for non-core matters:

(b) Applicability of Rule 12(b)–(i) F.R.Civ.P. Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that **the party does or does not consent to entry of final orders or judgment by the bankruptcy court.**

Fed. R. Bank. P. 7012(b) (emphasis added).

JOINT DISCOVERY PLAN

The Parties filed their Joint Discovery Plan on February 4, 2022. Dckt. 15.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶ 2, Dckt. 1. In the Answer, Defendant fails to admit to admit or deny the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 3; Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **xxxxxxx, 2022**.
- c. Expert Witnesses shall be disclosed on or before **August 1, 2022**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **August 16, 2022**.
- d. Deadline to exchange Expert Witness Reports is **August 16, 2022**.
- e. Non-Expert discovery closes, including the hearing of any discovery motions, on **July 6, 2022**.
- f. Expert Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2022**.
- g. Dispositive Motions shall be heard before **September 26, 2022**.
- h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **11:00 a.m. on October 13, 2021** (specially set day and time).

2. [10-90281](#)-E-7 LORRAINE/GARY ERWIN
[21-9005](#)
ERWIN ET AL V. U.S. BANK,
NATIONAL ASSOCIATION ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
5-24-21 [\[1\]](#)

Plaintiff's Atty: Darren Marcus Salvin
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 11/18/21 pursuant to the Plaintiff-Debtor's request for time to conduct further investigation and discovery and the unique facts and circumstances.

Order denying Motion for Entry of Default Judgment filed 11/19/21 [Dckt 44]

The Status Conference is XXXXXXX
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FEBRUARY 9, 2022 STATUS CONFERENCE

The Civil Minutes stating the findings of fact and conclusions of from the court's denial of Plaintiff's Motion for Entry of Default Judgement was filed on November 18, 2021. Dckt. 43. The Status Conference was continued to February 9, 2022, in light of some of the unique discovery to be conducted.

At the Status Conference, Plaintiff-Debtor reported, XXXXXXX

FINAL RULINGS

3. [18-20964](#)-E-7 **BRADLEY GILBREATH** **STATUS CONFERENCE RE:**
[21-2084](#) **HUSTED V. GILBREATH** **COMPLAINT**
12-2-21 [\[1\]](#)

Final Ruling: No appearance at the February 9, 2022 Status Conference is required.

Plaintiff's Atty: Estela Pino, Esq.
Defendant's Atty: unknown

Adv. Filed: 12/2/21
Answer: none

Nature of Action:
Recovery of money/property - turnover of property

Notes:
Substitution of Attorneys [for Plaintiff/Trustee] filed 1/31/22 [Dckt 12]; Order granting filed 1/31/22 [Dckt 13]

Request for Entry of Default By Plaintiff [re Cynthia Fegins Gilbreath] filed 2/1/22 [Dckt 15]; Entry of Default and Order Re: Default Judgment Procedures filed [by the court] 2/1/22 [Dckt 17]

Notice of Entry of Default and Order Re: Default Judgment Procedures filed 2/1/22 [Dckt 19]

The Status Conference is continued to 2:00 p.m. on March 9, 2022.
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FEBRUARY 9, 2022 STATUS CONFERENCE

Kimberly J. Husted, the Plaintiff-Trustee, filed a Status Conference Statement on February 2, 2022. Dckt. 21. She reports that no responsive pleading having been filed by Cynthia Glibreath, the Defendant, Defendant's default has been entered February 1, 2022 (Dckt. 17) and Plaintiff-Trustee is preparing a Motion for Entry of Default Judgment.

In the Complaint, the Plaintiff-Trustee is seeking to recover property of the bankruptcy estate from a non-debtor.